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Gabriel S. Meyer
Assistant General Attorney

April 23, 2008

Via Electronic Filing

The Honorable Anne Quinlan
Acting Secretary
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

**RE: STB Docket No. AB-33 (Sub-No. 265X)--Abandonment and
Discontinuance of Trackage Rights on the Santa Monica Industrial
Lead, from Milepost 485.61 to Milepost 486.00**

Dear Secretary Quinlan

Attached is Union Pacific Railroad Company's Verified Reply to James Riffin's Notice of Intent to File an Offer of Financial Assistance and Petition to Toll the Offer of Financial Assistance Filing Date, filed on April 16, 2008 in the above-referenced matter.

Please do not hesitate to contact me if you have any questions

Sincerely,

A handwritten signature in cursive script that reads "Gabriel S. Meyer".

Gabriel S. Meyer

Attachment

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 265X)

**UNION PACIFIC RAILROAD COMPANY
--ABANDONMENT AND DISCONTINUANCE EXEMPTION--
IN LOS ANGELES COUNTY, CALIFORNIA
(SANTA MONICA INDUSTRIAL LEAD)**

**Verified Reply to James Riffin's
Notice of Intent to File an Offer of Financial Assistance and
Petition to Toll the Offer of Financial Assistance Filing Date**

(Contains Color Images)

**UNION PACIFIC RAILROAD COMPANY
Gabriel S Meyer
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Dated and Filed: April 23, 2008

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB-33 (Sub-No. 265X)

**UNION-PACIFIC RAILROAD COMPANY
-- ABANDONMENT AND DISCONTINUANCE EXEMPTION --
IN LOS ANGELES COUNTY, CALIFORNIA
(SANTA MONICA INDUSTRIAL LEAD)**

**Verified Reply to James Riffin's
Notice of Intent to File an Offer of Financial Assistance and
Petition to Toll the Offer of Financial Assistance Filing Date**

Pursuant to 49 U S C. §10904 and 49 CFR §1152 27(c), Union Pacific Railroad Company ("UP") hereby replies to James Riffin's Notice of Intent to File an Offer of Financial Assistance ("NOIOFA") and Petition to Toll the Offer of Financial Assistance Filing Date ("Petition"), filed in the above-referenced matter on April 16, 2008. Through the NOIOFA, Mr. Riffin indicates interest in purchasing the two portions of the Santa Monica Industrial Lead (the "Line"), which were the subject of a Notice of Exemption that UP filed on March 19, 2008.

UP respectfully requests that the Board reject Mr. Riffin's NOIOFA and the associated Petition. As explained in greater detail below, Mr. Riffin's NOIOFA to purchase the Line is invalid because most of the Line he seeks to purchase is comprised of trackage that UP does not own. The NOIOFA is further invalid, because even if Mr. Riffin acquired the segment of the Line that UP does own, its

very short length, operating limitations, and absence of any potential shippers would preclude railroad operations upon it

I. Offers of Financial Assistance may not be used to purchase trackage rights.

In its Notice of Exemption, UP notified the Board of its intention to respectively abandon, and discontinue trackage rights over, two contiguous segments of the Line, which total 0.39 miles in length. The portion of the Line owned by UP and proposed for abandonment (the "Proposed Abandonment") extends a distance of 0.08 miles, or approximately 400 feet, from Milepost 485.61 to Milepost 485.69. The remainder of the Line, which is owned by the Los Angeles County Metropolitan Transit Authority ("LACMTA"), extends a distance of 0.31 miles, from Milepost 485.69 to Milepost 486.00. LACMTA retains a common carrier obligation to provide rail service on this portion of the Line.¹

Despite the fact that UP only owns 0.08 miles of the Line, Mr. Riffin proposes to purchase the entire 0.39 mile Line. Because UP does not own the 0.31-mile segment of the Line, Mr. Riffin cannot purchase it using the OFA process. The Board has repeatedly recognized that 49 U.S.C. §10904 does not authorize the "purchase" of a line segment proposed for a trackage rights

¹ See *Southern Pac. Transp. Co. — Abandonment Exemption — Los Angeles County, CA*, 8 I.C.C. 2d 495 at 508 (1992). UP has also been informed by LACMTA's counsel, Charles Spitulnik, that LACMTA retains a residual common carrier obligation with respect to the 0.31-mile segment of the Line that LACMTA owns.

discontinuance² The Board has also repeatedly held that in such situations, the only relief available pursuant to Section 10904 is an offer to subsidize the continued operations of the carrier seeking the trackage rights discontinuance³ Mr Riffin has not offered to subsidize continued trackage rights operations Accordingly, the Board must reject Mr. Riffin's NOIOFA for the purchase of the Line, and the associated Petition to toll the OFA filing date.

II. There is no evidence that the 0.08-mile segment of the Line which is eligible for an OFA purchase would be used for the movement of rail traffic.

A party submitting an OFA "must show that it 'can, and will provide continued rail service," and the Board "must ask whether any shipper would use the line and whether there is sufficient available traffic " *Union Pac. RR Co.—Abandonment Exemption in Lancaster County, NE*, Docket No. AB-33 (Sub No. 71X), ICC served Sept 25, 1992, 1992 WL 236728, at 4 (citation omitted) (rejecting OFA on grounds that it did not appear likely to lead to continued rail service), see also *Roanng Fork Railroad Holding Authonty—Abandonment*

² See, e.g., *Cent Ill. RR Co -- Discontinuance of Service Exemption—In Peona County, IL*, STB Docket No. AB-1066X, STB served Nov 21, 2005 ("Cent Ill. RR Co "); *D&H Rwy. Co , Inc.—Discontinuance of Trackage Rights Exemption—In Susquehanna County, PA and Broome, Tioga, Chemung, Steuben, Allegany, Livingston, Wyoming, Erie, and Genesee Counties, NY*, STB Docket No AB-156 (Sub-No 25X), STB served Mar. 30, 2005.

³ See, e g , *Cent Ill RR Co ; CSX Transp Inc —Discontinuance Exemption—in Knox County, TN*, STB Docket No AB-55 (Sub-No. 641X), STB served Jan 2, 2004, *CSX Transp , Inc —Discontinuance Exemption—(Between East of Memphis and Cordova) in Shelby County, TN*, STB Docket No. AB-55 (Sub-No 615X), STB served July 17, 2002

Exemption—in Garfield, Eagle and Pitkin Counties, CO, STB Docket No AB-547X, STB served May 21, 1999, at 4 ("Where the line is not currently active, there must be some assurance that shippers are likely to make use of the line if continued service is made available, and that there is sufficient traffic to enable the operator to fulfill its commitment to provide that service ")

The Board has further held, "[T]he legislative history of the Staggers Act makes clear that the financial assistance provisions were to be invoked only when those offering financial assistance did so because they were '*sincerely interested in improving rail service*'." *The Burlington Northern and Santa Fe Rwy Co.—Abandonment Exemption—in King County, WA, STB Docket No AB-6 (Sub-No 380X), STB served Aug. 5, 1998, at 7 (citing Hayfield Northern R. v. Chicago & N W Transp., 467 U.S 622, 630 & n 8 (1984)) (emphasis added), see also CSX Transp , Inc.—Abandonment Exemption—in Franklin County, PA, STB Docket No AB-55 (Sub. No 568X), STB served Jan 20, 2004, at 4 (citing H R Rep. No. 96-1430, 96th Cong , 1st Sess. 125, reprinted in 1980 U S Code Cong. & Admin News 4110, 4157) ⁴*

As explained in further detail below, and in the attached verified statement of Garry Malmberg, the evidence in this matter indicates that the 0.08-mile

⁴ The cited language was originally contained in a House Conference Report, preceding the passage of the Staggers Rail Act of 1980. The Report stated, "The [OFA] provisions . . . assist shippers who are sincerely interested in improving rail service, while at the same time protecting carriers from protracted legal proceedings which are calculated merely to tediously extend the abandonment process." H R Rep No 96-1430, 96th Cong., 1st Sess. 125, *reprinted in* 1980 U.S.C.C.A.N 4110, 4157.

Proposed Abandonment, which is subject to purchase through an OFA,⁵ cannot support rail service. The evidence further indicates that there is no likelihood that any shipper would generate any traffic for movement over the Proposed Abandonment. Moreover, in light of the Proposed Abandonment's non-viability as an ongoing operation, it appears doubtful that Mr. Riffin is sincerely interested in improving rail service. For these reasons, the Board should reject his NOIOFA and the associated Petition to toll the OFA filing date.

The Proposed Abandonment's short length and the narrow width of its right-of-way (approximately 30 feet) make it unsuitable for continued rail operations.⁶ Its short, single track configuration cannot support any future rail traffic, let alone enough rail traffic to sustain ongoing rail operations.⁷ Additionally, although the Proposed Abandonment is approximately 400 feet long, only about half this length could be used for car storage and interchange facilities—essential components of any railroad that Mr. Riffin would operate.

As indicated by the map attached as Exhibit 1 and the satellite photo attached as Exhibit 2, there is no possibility of expanding the Proposed

⁵ As discussed in Section I, above, Mr. Riffin cannot purchase the entire Line through the OFA process. At most, he could only purchase the portion of the Line that UP proposes to abandon, the Proposed Abandonment, which is 0.08 miles, or approximately 400 feet long.

⁶ Although the right of way is significantly wider where it crosses Long Beach Avenue, the property at that location is subject to an easement, held by the City of Los Angeles, for use as a public street.

⁷ As indicated in Exhibit 1, a portion of the land associated with the Proposed Abandonment's right of way is occupied by Long Beach Avenue, a public street. Although technically UP property, under the terms of an easement held by the City of Los Angeles, it may only be used as a public street.

Abandonment to make it suitable for continued rail service, nor any locations where rail-served customers could locate along it. At its western end, the Proposed Abandonment crosses Long Beach Avenue, at grade, before terminating just to the west of the street (See Exhibit 3). Because it occupies a public street, this section of track could not be used to store cars or serve customers. At its eastern end, the Proposed Abandonment connects with UP's Wilmington Subdivision. (See Exhibit 4). Because any cars stored near the eastern end of the Proposed Abandonment would foul UP's line, approximately 100 feet of track at the eastern end of the Proposed Abandonment could not be effectively utilized.

Finally, the area to the north of the Proposed Abandonment's right of way is occupied by a scrap metals recycler, Central Metals, Inc. The company has expressed interest in acquiring the property associated with the Proposed Abandonment in order to expand its operations. It has not expressed any interest in utilizing rail service.

As the attached exhibits demonstrate, the track associated with the Proposed Abandonment cannot be expanded, and only a small portion of it—roughly 250 feet—could be used for interchange operations, car storage, or to serve customers. Additionally, the narrow width of the right of way would preclude construction of a second track and turnouts, which would be required to perform switching operations incidental to moving customer traffic.

As a result, there is no possibility that the Proposed Abandonment could generate rail traffic, as its short right of way and narrow width make restoration of

rail service impossible. Nor is there any reason to believe that rail-served shippers could be induced to locate on property associated with the Proposed Abandonment, given the lack of space for construction of necessary loading facilities. Finally, because the Proposed Abandonment is so clearly ill-suited for continued railroad operations, it is questionable whether Mr. Riffin is "sincerely interested in improving rail service" through acquiring the Proposed Abandonment.⁸

⁸ As the Board is aware, Mr. Riffin has a long history of frivolous actions before the Board and other judicial bodies. See *Motion to Strike Comment and Notice of Intent, Motion for Sanctions, Motion to Add OFA Exemption Request to Petition, Request for Leave to File Brief Reply to Comments*, STB Docket No. AB-290 (Sub. No. 293X), filed by Norfolk Southern Railway Co., Sept. 6, 2007. The Board has stated that it "will closely scrutinize any future filings by Mr. Riffin." *Norfolk Southern Rwy. Co.—Abandonment Exemption—In Norfolk and Virginia Beach, VA*, STB Docket No. AB-290 (Sub-No. 293X), STB served Nov. 6, 2007. Given Mr. Riffin's past history, and the unsuitability of the Proposed Abandonment for continued-railroad operations pursuant to an OFA, it appears doubtful that Mr. Riffin's true interest lies in acquiring the Proposed Abandonment in order to improve rail service.

WHEREFORE, Union Pacific Railroad Company respectfully requests that the Board issue a decision rejecting James Riffin's Notice of Intent to File an Offer of Financial Assistance and the associated Petition to toll the OFA filing date.

Dated this 23rd day of April, 2008

Respectfully submitted,

UNION PACIFIC RAILROAD COMPANY



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VERIFIED STATEMENT OF GARRY A. MALMBERG

My name is Garry A. Malmberg. I am a Senior Manager—Real Estate for Union Pacific Railroad Company ("UP"). My office address is 1400 Douglas Street, Omaha, Nebraska 68179. I hold a bachelors degree in Real Estate and Land Use Economics from the University of Nebraska at Omaha. I began my employment with UP in 1978. During my career at UP I have held various positions in the Engineering and Real Estate departments. I have been in my current position since 1999.

The purpose of this statement is to provide information regarding the property associated with a segment of UP's Santa Monica Industrial Lead, extending from Milepost 485.61 to Milepost 485.69 (the "Proposed Abandonment"). I base my observations and conclusions upon a site inspection I made of the Proposed Abandonment and the surrounding area during the week of January 21, 2008. In my description of the Proposed Abandonment, I reference the exhibits attached to UP's Reply.

I. There is no space for a rail-served shipper to locate along the Proposed Abandonment.

The total length of the Proposed Abandonment is 0.08 miles, or approximately 400 feet. Most of its UP-owned right of way is approximately 30 feet wide, except for a short segment near the western end of the Proposed Abandonment, where its single track crosses Long Beach Avenue at grade. The property at that location is subject to an easement, held by the City of Los Angeles, for use as a public street. (See Exhibits

1 and 3) Because of the Proposed Abandonment's short length and narrow width, there is not enough room for a rail-served shipper to locate on it.

Nor is there any property adjacent to the Proposed Abandonment that a new rail-served shipper could occupy. At its western end, the Proposed Abandonment abuts Long Beach Avenue and a rail transit line. To its south and east, the Proposed Abandonment abuts and parallels UP's Wilmington Subdivision. And to the north and west, the Proposed Abandonment abuts property owned by a scrap metal recycler, Central Metals, Inc. The company has expressed interest in acquiring the property associated with the Proposed Abandonment from UP in order to expand its operations. It has not expressed any interest in utilizing rail service.

II. The Proposed Abandonment could not be utilized for railroad operations.

In my judgment, much of the Proposed Abandonment could not be utilized in day-to-day railroad operations. Because it occupies a public street, the section of track at the Proposed Abandonment's western end, could not be used to store cars or serve customers. This stretch of track is approximately 30 feet long. Additionally, a significant portion of the Proposed Abandonment's eastern end, where the track would connect with UP's Wilmington Subdivision, could not be effectively utilized either. Any cars stored on the approximately 100 feet of track approaching the connection could potentially foul UP's main line. As a result, only about 250 feet of the track associated with the Proposed Abandonment could be used for interchange operations, car storage, or to serve customers.

Furthermore, because the right of way is so narrow, there is no space for construction of a second track or siding, and associated turnouts. Such additions would almost certainly be necessary for a railroad to perform customer switching operations, or to use as interchange and car storage facilities, which would be essential components of a connecting carrier's operations.

STATE OF NEBRASKA

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ss.

COUNTY OF DOUGLAS

Garry A. Malmberg, being first duly sworn, deposes and states that he has read the above document, knows the facts asserted therein, and that the same are true as stated

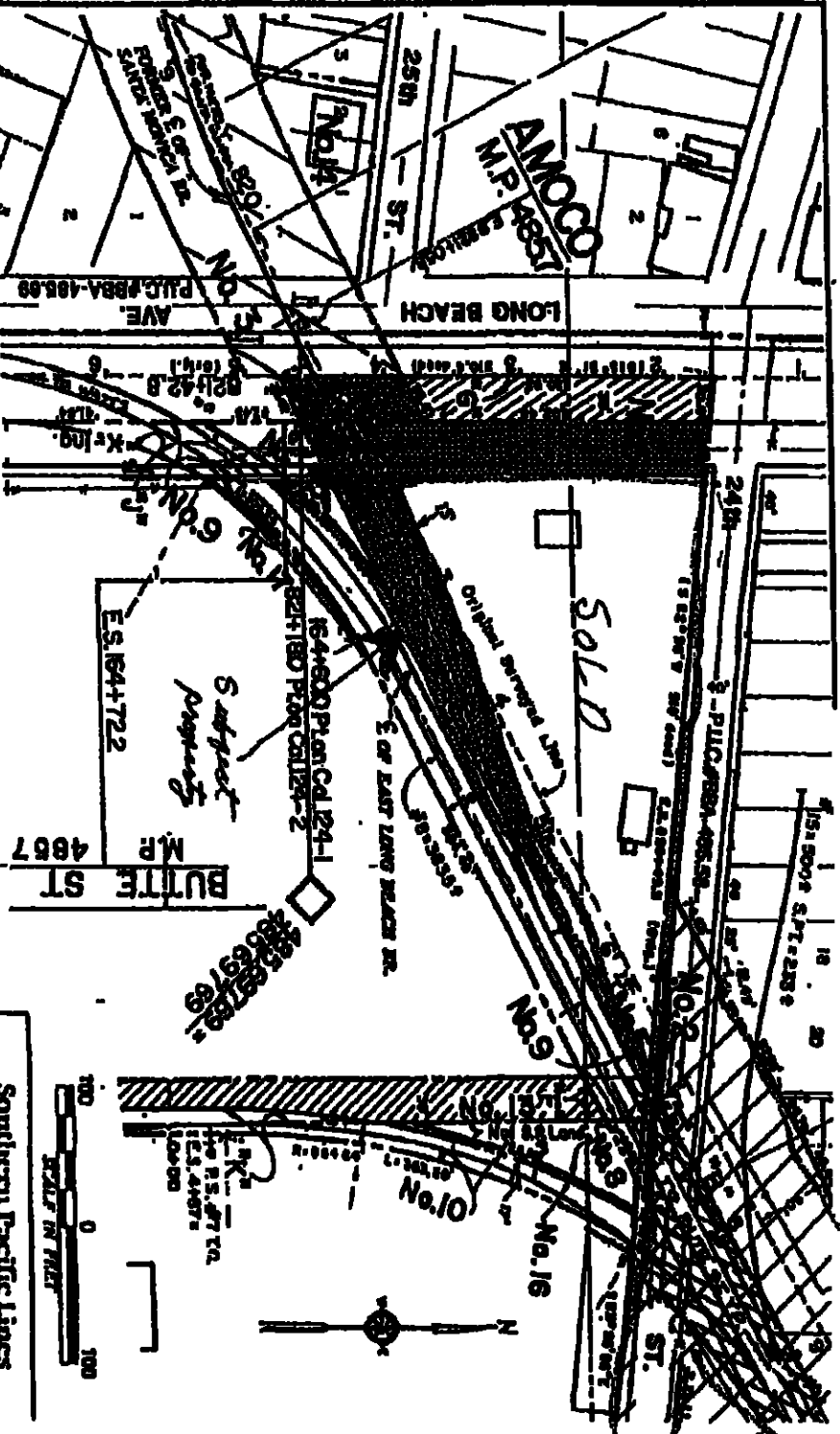

Garry A. Malmberg

SUBSCRIBED and SWORN to before me this 23rd day of April 2008




Notary Public

Exhibit 1



SPTCO. PROPERTY LINES
 SALE AREA
 GROSS: 72,309± SQ.FT. OR 1.660± ACS.
 10,149± SQ.FT. OR 0.233± AC.
 EASEMENT TO BE RESERVED FOR RAILROAD, ETC. PURPOSES
 SPTCO. INTEREST IN PUBLIC STREET INCLUDED IN SALE AREA
 NET: 51,080± SQ.FT. OR 1.173± ACS.
 NO FIBER OPTICS OR SFTPL INVOLVED

Southern Pacific Lines	
AMOCO	
SALE OF PROPERTY TO	
DATE: 1/1/02	BOOK: 100
PLAT: 100	PAGE: 100
RECORD: 100	INDEX: 100
FILE: 100	NO. 100

Exhibit 2



Exhibit 3

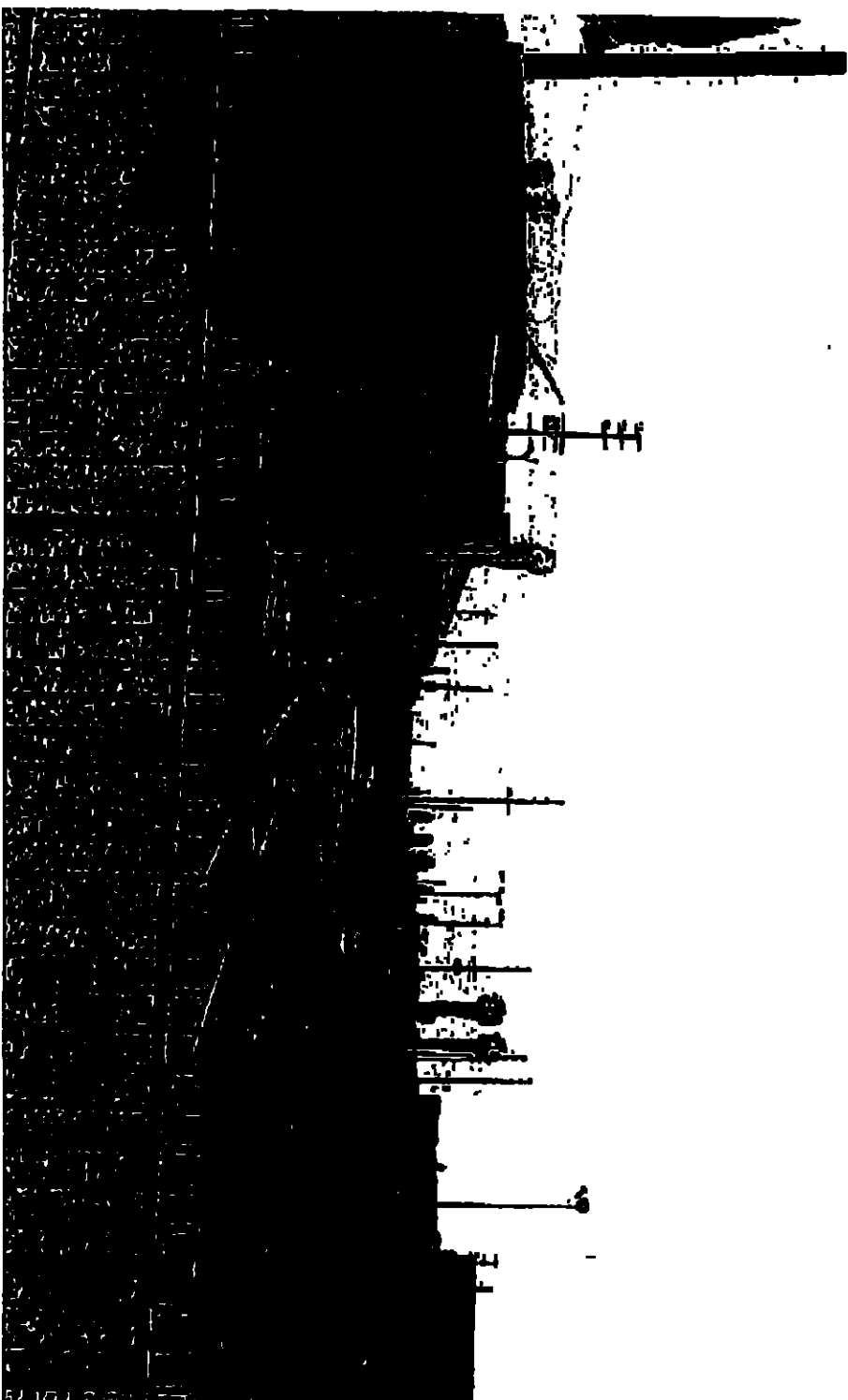
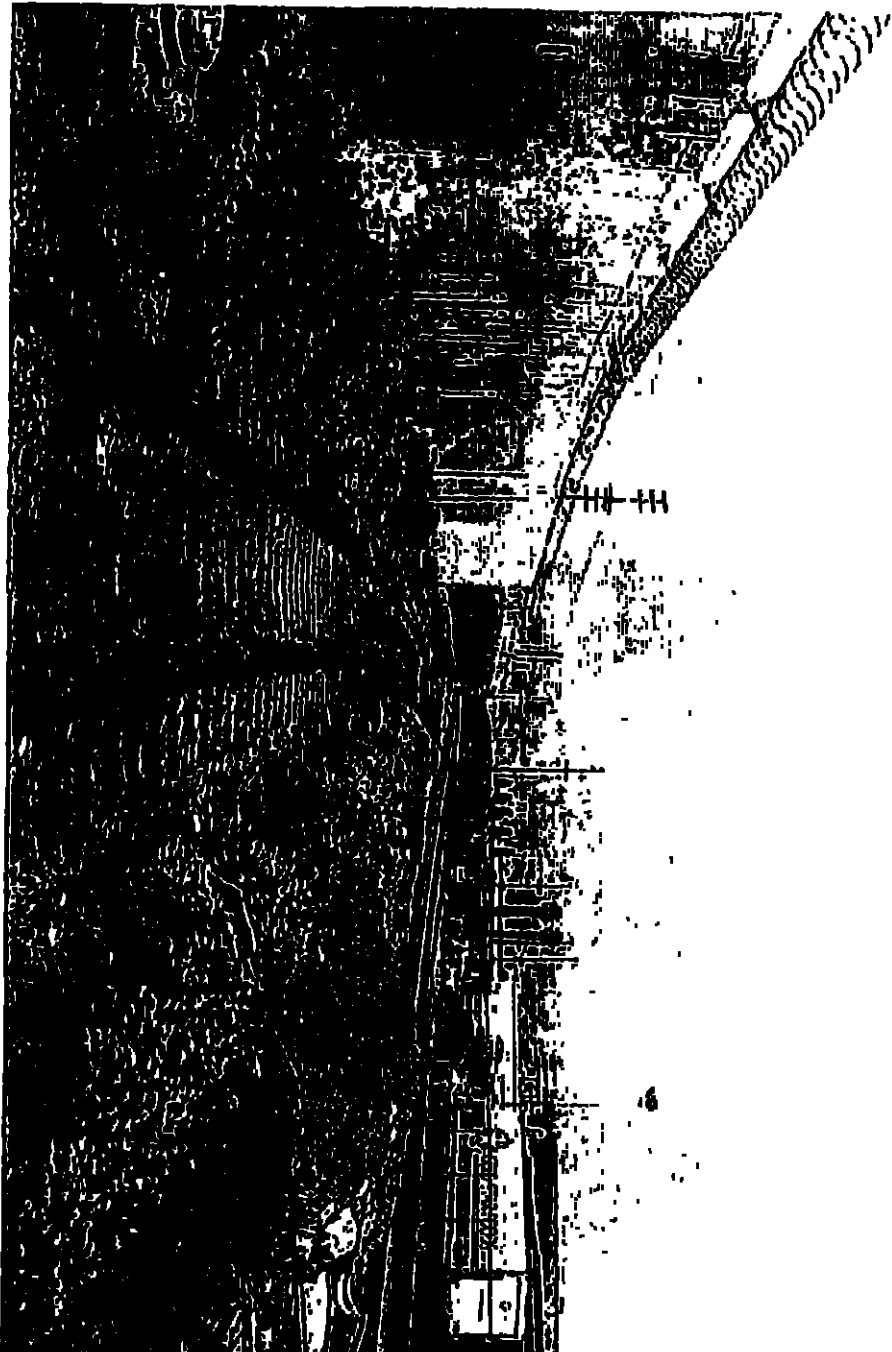


Exhibit 4



CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of Union Pacific Railroad Company's Reply to James Riffin's Notice of Intent to File an Offer of Financial Assistance and Petition to Toll the Offer of Financial Assistance Filing Date was served by prepaid first class mail on the 23rd day of April, 2008, upon the following party.

Mr. James Riffin
1941 Greenspring Drive
Timonium, MD 21093

Dated this 23rd day of April, 2008



Gabriel S Meyer
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